

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1584 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL A KHATRI

Versus

BHAGWANDAS V KHATRI

Appearance:

MR RAMNANDAN SINGH for Petitioner
NOTICE SERVED BY DS for Respondent No. 1
MR ND GOHIL for Respondent No. 2
MR KETAN SHAH for MR TUSHAR MEHTA for Respondent No. 4
NOTICE SERVED for Respondent Nos. 1,2,3 & 5

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/07/2000

ORAL JUDGEMENT

This Civil Revision Application is taken up
for arguments at admission stage.

2. This Civil Revision Application is filed under Section 29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 (in short " the Act") filed by original plaintiff of Rent Suit No. 125 of 1998 filed in the Court of Small Causes Court at Ahmedabad challenging the correctness, legality, propriety and regularity of judgment Ex.23 dated 31st July, 1998 rendered by Second Joint District Judge, Vadodara (who will be hereinafter referred to as " the Appellate Judge") in Misc. Civil Appeal No. 236 of 1998. Herein this Civil Revision Application, revision petitioner was plaintiff, while revision opponents Nos. 1 to 5 were defendants in Rent Suit No. 125 of 1998. For the sake of convenience, parties will be referred to hereinafter as the plaintiff and defendants respectively.

3. The facts leading to this present Civil Revision Application in a nutshell are as follows:-

As per the case of the plaintiff, there is one trust named and known as "Vadodariya Kshatriya Gnatiwadi Ane Kuldevi Mandir Trust" registered under the Bombay Public Trust Act. Said trust will be referred to hereinafter as " the trust" for the sake of convenience. As per the case of the plaintiff, plaintiff and defendant nos. 1 and 2 are the trustees of the said trust. As stated in plaint, defendant nos. 1 and 2 had shown their un-willingness to join as plaintiffs in the suit, plaintiff has joined them as defendant nos. 1 and 2. As per the case of the plaintiff, on the date of filing of the suit i.e. on 31st March, 1998, only three trustees were alive and others were dead, and that three trustees who are alive, are present plaintiff and defendant nos. 1 and 2.

The trust and its property described in Para 2 of the plaint and one of the parts of that property have been let to defendant nos. 3 to 5, and therefore, defendant nos. 3 to 5 are the tenants and the trust is a landlord.

As per the case of the plaintiff, defendant no.1 has mismanaged the affairs of the administration of the trust and that defendant no.1 was managing affairs of the trust as per his own whims, as a result of which he has given a permission in name of trust to defendant nos. 3 to 5 for carrying out certain repairs in the suit premises pursuant to the application dated 9th May, 1997 submitted to trust by defendant nos. 3,4 and 5. As it appears from Para 4 of the plaint, plaintiff has not

given any consent for permission which has been granted by defendant no.1 to the defendant nos. 3 to 5. As alleged in the plaint, one resolution was passed in the Meeting of the trustees of the trust and on that resolution, signatures of defendant no.2 as well as plaintiff were taken by defendant no.1, and therefore, that resolution is incorrect and not binding to present plaintiff as well as defendant no.2. It is also the case of the plaintiff that he has not given any consent to defendant no.1 for permission being granted to defendant nos. 3 to 5. Thus, by challenging the resolution of the trustees of the trust and the permission granted by defendant no.1, the plaintiff filed Rent Suit No. 125 of 1998 in the Court of Small Causes, Baroda and mainly for one relief that his suit be decreed for possession of suit premises which have been let to defendant nos. 3 to 5 and space on which some rooms have been constructed towards the northern side of the property (by demolishing the construction of rooms) directing defendant nos. 3 to 5 to hand over the possession of the suit premises to the trust, and secondly for the orders for the costs of the suit. It may be noted that plaintiff has not prayed for any injunction either perpetual or mandatory or prohibitory in nature in the plaint. Still however he submitted one interim application Ex.5 in the suit on the date on which the suit was filed. By that application Ex.5, plaintiff prayed for an interim injunction restraining the defendant nos. 3 to 5 from making any further construction in the suit premises through their agents, servants etc. On 31st March, 1998, the day on which said application Ex. 5 was presented, the learned Judge of the trial court did not pass any order granting ad-interim injunction but by his order, he directed defendant nos. 3 to 5 to maintain status quo position of the suit premises as per Commissioner's report till 13th April, 1998. Thereafter that application Ex.5 was taken up for hearing by the learned Judge of the trial court. After hearing the arguments of the learned advocates of both the parties, the learned Judge of the trial court was pleased to come to a conclusion that plaintiff has no prima facie case to obtain an interim injunction as prayed for only in Ex.5, and ultimately, by passing his order dt. 30th April, 1998, he was pleased to dismiss the said application Ex.5 of the plaintiff.

4. Being aggrieved against and dissatisfied with the said order dated 30th April, 1998 below Ex.5, in Rent Suit No.125 of 1998, the plaintiff preferred Misc. Civil Appeal No. 236 of 1998 under Order 43 Rule 1(r) of the Civil Procedure Code, and by preferring that appeal, he challenged the order of the trial court. The learned

Judge of the Appellate Court, after hearing the arguments of the learned advocates of both the parties did not accept the case of the plaintiff and accepted the case of the defendants and ultimately, by rendering his judgment Ex.23 dated 31st July, 1998, he dismissed the appeal and confirmed the order below Ex.5 passed by the learned Judge of the trial court.

Being aggrieved against and dissatisfied with the said judgment of the Appellate Judge, the plaintiff has preferred this present Civil Revision Application No. 1584 of 1998 and the plaintiff has challenged the correctness, legality, propriety and regularity of the order of the Appellate Judge.

5. I have heard Shri Ramnandan Singh, the learned advocate for the revision petitioner and Mr. Ketan Shah, the learned Advocate for the revision opponent no.4. Other revision opponents have thought it fit to remain absent, though the notices are already served upon them.

6. Before this court deals with the contentions of both the parties, it would be in the interest of justice to place on record that the powers under Sec.29(2) of the Bombay Rent Act are revisional powers with the High Court is clothed. It empowers the High Court to correct error which may make the decision contrary to law and which errors go to the root of the decision. In a case of PATEL VALMIK HIMATLAL AND OTHERS Vs. PATEL MOHANLAL MULJIBHAI reported in 1998 (7) SCC 383, the Hon'ble Supreme Court has held that Sec.29(2) does not vest the High Court with the power to rehear the matter and reappraise the evidence. Mere fact that different view is possible on appreciation of evidence cannot be a ground for exercise of revisional jurisdiction. The High Court cannot substitute its own finding on a question of fact for the findings recorded by the courts below on reappraisal of evidence.

7. Here in this case, both the courts below have given concurrent and consistent findings on the basis of materials and documents produced by both the parties and have come to a conclusion that plaintiff has got no prima facie case, and therefore, the learned Judge of the trial court did not grant any interim injunction by passing the order below Ex.5 and the Appellate Judge confirmed that order.

With these facts and the legal position with regard to scope and ambit of Sec. 29(2) of the Act and the powers of the High Court in such revision

applications, the contentions are considered.

8. Shri Ramnandan Singh, the learned advocate for the revision petitioner has argued that in this case, revision opponent no.2 i.e. defendant no.2 has supported the case of the plaintiff for which defendant no.2 i.e. revision opponent no.2, though he has not appeared before this court, has filed affidavit-in-reply dated 20-06-1999. Shri Ramnandan Singh has then argued that consent of plaintiff and defendant no.2 was taken on a plane blank paper on 13th April, 1997. Such type of pleading is not there in the plaint. It is mentioned in the plaint that in the Meeting of trustees of the trust, a resolution was prepared and signature of the plaintiff was taken by the defendant no.1. In plaint, it is pleaded that that resolution is incorrect, and therefore, it is not the case of the plaintiff from the very beginning, that consent of the plaintiff was taken on plane blank paper on 13th April, 1997. His another argument is to the effect that permission was granted to defendant nos. 3 to 5 on the basis of Resolution to which plaintiff and defendant no. 2 do not agree. His third argument is to the effect that defendant no.1 has colluded with revision opponent nos. 3 to 5 and the defendant no.1 granted permission without consent of the plaintiff, and that permission is granted with some ulterior motive. No such pleadings are there in the plaint.

9. For a moment, if it is believed that defendant no.1 has granted permission to defendant nos. 3 to 5, without taking plaintiff and defendant no.1 in confidence, then that matter is of dispute in between the trustees interse and when that dispute is concerning to the affairs of the trust, then the plaintiff should move the office of the Charity Commissioner to set things in right order. He has not moved the office of the Charity Commissioner and has straight way filed the suit against the tenants of the Trust for getting the possession of the suit premises. Plaintiff has not filed any separate suit for a decree of declaration that resolution passed in the Meeting of the trustees of the trust is illegal and not binding to him. Both the parties have furnished certain documents for deciding this Civil Revision Application. They are taken on record. As per that documents, three trustees who are alive, passed a resolution dated 13th April, 1997 in the Meeting of Trustees in which the present plaintiff was present. As per that resolution, the application dated 9th April, 1997 given by defendant nos. 3 to 5 was read and considered, and thereafter it was unanimously decided by

all the three trustees of the trust that powers have been granted to Khatri Bhagwandas Vallabhadas Khatri -defendant no.1 to take further action in the subject matter of that application, and therefore, by that resolution the trust delegated the powers to defendant no.1 to take appropriate action in the matter of application dated 9th April, 1997 submitted by the defendant nos. 3 to 5. Shri Ramandan Singh, the learned advocate for the revision petitioner has argued that other trustees cannot delegate such powers to one trustee and in support of that argument, he has cited an authority of SHEIKH ABDUL KAYAM AND OTHERS Vs. MULLA ALIBHAI AND OTHERS, reported in AIR 1963 SC 309, wherein it is held that trustees cannot renounce and trustees cannot also delegate all their functions. It was held that such power was not given by the Trust Deed. In this case, plaintiff has not produced any Trust Deed showing the terms and conditions of the Trust Deed as to whether powers of the trust can be delegated to one of the trustees or not. In absence of the Trust Deed, this authority is not helpful to the revision petitioner.

On the basis of aforesaid resolution dated 13th April, 1997, the defendant no.1 entered into one agreement dated 9th May, 1997 with defendant nos. 3 to 5 and he granted permission for and on behalf of trust to defendant nos. 3 to 5 to carry out the repairs in the suit premises as per their requests made in their application dated 9th April, 1997, and on the basis of these two documents, the learned Judge of the trial court was pleased to come to a conclusion that plaintiff has no prima facie case to prevent the defendant nos. 3 to 5 from carrying out the repairs in the suit premises because they are equipped with the permission granted by defendant no.1 who is admittedly a trustee and in whose favour the resolution was passed by the trustees including the plaintiff.

10. Shri Ketan Shah, the learned advocate for revision opponent no.4 has argued that present plaintiff submitted his resignation on 29th September, 1997 and copy of that resignation has been produced by defendant nos. 3 to 5 in the suit before the trial court. There is nothing on record to show that plaintiff has withdrawn that resignation. At present from the papers, it appears that that resignation is still on record. It is neither withdrawn nor any explanation is given for such resignation tendered by the plaintiff. To day, during the course of hearing of this Civil Revision Application, revision petitioner has produced one copy of extract from Public Trust Register kept and maintained by the Office

of the Charity Commissioner, and as per this copy, as on 27th February, 1998, present plaintiff was shown as one of the trustees. Shri Ketan Shah has strongly objected against production of this type of entry from Public Trust Register, as no such document can be seen at the revisional stage and for that he has cited an authority of LILARAM JAMIATRAI AND OTHERS vs. MEGHRAJ HARDASMAL KALWANI AND OTHERS reported in AIR 1972 GUJ. 66, wherein it is held that " High Court cannot examine the legality of the decree on facts which were not before the lower appellate court and which occurred subsequently. The revisional jurisdiction of the High Court under Sec.29 extends only to corrections of errors of law or to removal of legal infirmities in the appellate decrees passed under the Bombay Rent Act. The High Court has to accept the facts of the case as they are and find out whether the decision contained any errors of law or legal infirmities which it can correct or remove. It is also held that additional evidence of new and subsequent events also cannot be led in for the reasons that the new events which may be attempted to be brought on record will require investigation and proof which the High Court cannot do in a revision application". Therefore this entry from Public Trust Register produced to day by Shri Ramandan Singh cannot be looked into because it was not produced either before the trial court or before the appellate court. Still however, it is taken on record. Shri Ketan Shah, the learned advocate for revision opponent No.4 has argued that present plaintiff submitted resignation on 29th September, 1997, and within two days thereafter, two persons namely Kanaiyalal Natwerlal Khatri and Navinchandra Somchand Khatri of the community of the plaintiff and defendant nos. 1 and 2 filed Regular Civil Suit No. 1724 of 1997 against the present plaintiff, present defendant no.1, present defendant no.2 and present defendant nos. 3 to 5. In that suit, the resolution dated 13th April, 1997 passed in the Meeting of the trustees of the trust was indirectly challenged on the ground that defendant no.1 had no authority to grant a permission to the defendant nos. 3 to 5. In that suit, present plaintiff was also joined as one of the defendants and that two persons i.e. plaintiffs of Regular Civil Suit No. 1724 of 1997, had made a serious allegation against present plaintiff that he was in collusion with present defendant nos. 1 and 2. In that suit, similar type of application Ex.5 was given and the learned Judge of the trial court who was dealing with application Ex.5 presented in Regular Civil Suit No. 1724 of 1997, allowed that application in part. Prayer for interim injunction pending the suit restraining present defendant nos. 3 to 5 from making further

construction was refused, but at the same time, interim injunction was granted restraining defendant nos. 1 to 4 of that suit from transferring property to defendant no.5 either by sale, mortgage or in any other manner. As said earlier, interim injunction was not granted in favour of the plaintiffs in that Regular Civil Suit No. 1724/97 in which present plaintiff was a party. Thereafter that order was not challenged by either of the parties to higher forum and that order has remained effective and in force, even till today. Shri Ketan Shah has further argued that principles of res judicata will operate against the present plaintiff, because he was one of the parties in that earlier suit and whatever the findings were given by the learned Judge of the trial court while deciding that application Ex.5 are binding to him, as he has not preferred any appeal against that order.

11. Shri Ramandan Singh has tried to distinguish the arguments advanced by Shri Ketan Shah on the ground that in a previous suit, the present plaintiff was a mere defendant, and interim injunction was refused to plaintiffs of that suit, I am of the view that as per Sec.11 Explanation -4, that order passed below Ex.5 in Regular Civil Suit No. 1724 of 1997 will operate as res judicata against present plaintiff, because any matter which might and ought to have been made the ground of defence or attack in such a former suit, shall be deemed to have been a matter directly and substantially in issue in present suit. In that former suit, indirectly resolution of trustees was challenged. Present plaintiff is a party to that resolution and on the basis of that resolution, defendant granted a permission and on the basis of that permission, the learned Judge of the trial court did not grant any interim injunction restraining the present defendant nos. 3 to 5 from making any construction, and therefore, that decision is binding to present plaintiff. Still however, when the main matter is pending in the trial court, this present contention of Shri Ketan Shah with regard to res judicata is not seriously taken into consideration by this Court.

12. Main thing which is required to be taken into consideration is with regard to granting or refusing temporary injunction which rests on the sound discretion of the courts. Such exercise of discretion cannot be lightly interfered with by the appellate court, unless it is shown that such exercise of discretion is unreasonable or capricious, and therefore, powers of the first appellate Judge while deciding Misc. Civil Appeal No. 236 of 1998 are restricted in the sense that Misc. Civil Appeal will not be heard and decided as if regular

appeals are heard and decided. The area of interference of discretionary orders passed by the courts below in exercise of the discretion vested in them by the appellate court in appeal against such orders is, although not so much restricted as in the case of a revision under Section 115 of Civil Procedure Code. Still it is not as wide as the normal and ordinary appellate powers of an appellate court in deciding the appeals, the power is indeed very much restricted in its scope. And therefore, while examining the judgment of the Appellate Judge challenged in this Civil Revision Application, aforesaid legal position is kept in mind. The area of interference of such discretionary orders by the appellate court is circumscribed by the limitations and such interference would be legally permissible only where the order under review is passed by the courts below acting unreasonably or capriciously or ignoring relevant facts and adopting an unjudicial approach, and therefore, while examining judgment challenged in this Civil Revision Application, that legal position is also kept in mind. The learned Judge of the trial court relied on the copies of the resolution passed by all the trustees of Trust and permission granted by defendant no.1 for and on behalf of the trust, and therefore, whatever the decision arrived at by the learned Judge of the trial court is based on discretionary powers exercised judiciously and in no case it can be said that he acted unreasonably or capriciously.

13. Here in this case, most important aspect is seen by this court that the plaintiff has filed the suit only for a decree of eviction of the suit premises. He has not prayed for any perpetual injunction restraining defendant nos. 3 to 5 from making any further construction on the suit premises. It is well settled principles of law that in absence of prayer for perpetual injunction in the suit, no interim relief can be granted in application Ex.5 i.e. interim injunction application. The relief which cannot be granted in the suit, cannot be granted at the interim state of the suit. In case of JAYRAM RAMCHANDRA SIRSAT AND OTHERS VS. BABURAO MANGUESH KAREKAR AND OTHERS, reported in AIR 1973 GOA, DAMAN AND DIU, Page 1, it is held that if there is no prayer for restraining the appellant from committing a breach of any contract or any other injury of any kind, no interim relief can be granted by the trial court pending suit. When no decree for permanent injunction is sought for by plaintiff, then no interim injunction can be granted in that very suit. I am of the view that in absence of any prayer for a perpetual injunction in the suit, no interim injunction can be granted in a pending suit. The learned

Judge of the trial court has referred to one decision in a case of GUJRAT ELECTRICITY BOARD Vs. M/S MAHESHKUMAR & CO, reported in 23(2) GLR 479. In Para 9 of that Judgment, it is held that there is settled principles of law that in a suit where no permanent injunction was sought for, ordinarily a temporary injunction cannot be granted.

14. Whatever contentions are taken by Shri Ramandan Singh, learned advocate for revision petitioner with regard to resolution and permission granted by defendant no.1 for and on behalf of the trust on the basis of that resolution, are with regard to management of the trust and there are provisions in the Bombay Public Trust act to agitate that dispute between the trustees. The defendant nos. 3 to 5 are the tenant of the trust and when they are granted permission by existing trustee who has been empowered by resolution passed by three trustees including the present plaintiff, defendant nos. 3 to 5 cannot be prevented by the present plaintiff on the ground that the resolution was passed and permission was granted without his consent. On this contention, he is at liberty to move the Office of the Charity Commissioner or any appropriate forum, but this is not a forum to agitate for dispute between trustees. Thus the learned Judge of the trial court has appreciated the materials placed on record and on placing reliance on that materials and by keeping in mind the legal settled principles of law with regard to interim injunction, he has exercised his discretion judiciously for which the Appellate Court has no jurisdiction to interfere unless and until the order of the learned Judge is found illegal and capricious.

Under the circumstances, when there is concurrent and consistent findings of both the courts below on facts, this court finds that there is nothing otherwise to hold that the judgment challenged in this Civil Revision Application is not according to law. After all, both the courts below have exercised their judicial discretion in the matter of interim injunction application, and therefore, this Civil Revision Application deserves to be dismissed at the admission stage, and accordingly it is dismissed. Notice is discharged. Interim relief granted on 6th November, 1998 stands vacated. There shall be no order as to costs.

15. Looking to the facts and circumstances of the case, when plaintiff was a party in the former suit and when he did not choose to challenge the order of the learned Judge of the trial court in the matter of

application Ex.5 in that former suit, he was knowing the fate of the suit. In spite of the fact, he filed the suit and without seeking or making of prayer for perpetual injunction, he submitted an application Ex.5 for interim injunction to which he is not entitled to, and therefore, this court is of the opinion that this is a fit case in which revision petitioner should be ordered to pay costs to the defendant nos. 3 to 5. I, therefore, order that present revision petitioner shall pay Rs.1,000/- as costs to the defendant nos. 3 to 5. As matter carries some importance with regard to construction in the suit premises, the learned Judge of the trial court is required to be directed for expeditious disposal of the suit. The learned Judge of the trial court shall dispose of the suit as expeditiously as possible without being influenced by any observations made by this court in this Judgment. Interim order granted on 6th November, 1998 shall stand vacated.

16. Shri Ramanandan Singh, the learned advocate for revision petitioner submits with the instruction from his client that he wants to approach the superior court to challenge this order. Shri Ketan Shah, the learned advocate for the revision opponent objected to the request made by Shri Ramanandan Singh because pursuant to permission granted by the trust, they want to complete the construction work which has been held up by the order of this court and when monsoon season is already set in, they will be put to the difficulties, if final order is stayed. Under the circumstances, request made by petitioner is refused.

Writ of this order be sent to the trial court forth with. Direct service is permitted.

Date: 12/7/2000. (H.H.MEHTA, J.)

ccshah